

1/22/2021

DGW Kramer LLP Mail - Fwd: Mattel v. GoodMeNow, et al. - 1:20-cv-11075 - motion to modify injunction



Tracey Richardson <trichardson@dgwllp.com>

Fwd: Mattel v. GoodMeNow, et al. - 1:20-cv-11075 - motion to modify injunction

1 message

Katie Burghardt Kramer <kkramer@dgwllp.com>
To: Tracey Richardson <trichardson@dgwllp.com>

Fri, Jan 22, 2021 at 1:51 PM

Katherine Burghardt Kramer
kkramer@dgwllp.com
Direct: (917) 688-2585

----- Forwarded message -----

From: **Samson, Clete P.** <Clete.Samson@kutakrock.com>
Date: Fri, Jan 22, 2021 at 11:03 AM
Subject: RE: Mattel v. GoodMeNow, et al. - 1:20-cv-11075 - motion to modify injunction
To: Katie Burghardt Kramer <kkramer@dgwllp.com>
Cc: William Dunnegan <wd@dunnegan.com>, Laura Scileppi <ls@dunnegan.com>, Jacob Chen <jchen@dgwllp.com>, RongPing Wu <lwu@dgwllp.com>, Katz, Alyse (Legal) <alkatz@paypal.com>

Katie:

Based on a review of PayPal's records, I can confirm that the 11 accounts are registered in Hong Kong and, therefore, your client would have been presented with the Hong Kong User Agreement at sign-up. Attached is the most recent version of the Hong Kong UA.

Regards,

Clete P. Samson

Kutak Rock LLP

1650 Farnam St.

Omaha, NE 68102

Ph 402.346.6000

Fx 402.346.1148

Dir 402.661.8665

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1/22/2021

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From: Katie Burghardt Kramer <kkramer@dgwllp.com>

Sent: Thursday, January 21, 2021 11:02 AM

To: Samson, Clete P. <Clete.Samson@KutakRock.com>

Cc: William Dunnegan <wd@dunnegan.com>; Laura Scileppi <ls@dunnegan.com>; Jacob Chen <jchen@dgwllp.com>; RongPing Wu <lwu@dgwllp.com>; Katz, Alyse (Legal) <alkatz@paypal.com>

Subject: Re: Mattel v. GoodMeNow, et al. - 1:20-cv-11075 - motion to modify injunction

[CAUTION - EXTERNAL SENDER]

Clete,

Would you be able to confirm that Yokawa Network Ltd. is a customer of PayPal Hong Kong Limited? This is my understanding from the user agreement you referenced below, but I would appreciate your confirmation.

Thanks,

Katie

Katherine Burghardt Kramer

kkramer@dgwllp.com

Direct: (917) 688-2585

On Thu, Jan 21, 2021 at 10:04 AM Samson, Clete P. <Clete.Samson@kutakrock.com> wrote:

All,

I want to reiterate to all parties that PayPal is not taking any position with regard to the underlying TRO in your civil case. Please do not represent otherwise to the Court in the context of your pending hearing. PayPal will review and comply with any Court Order that is issued in your case upon proper service.

Please understand that PayPal's independent limitation on the 11 accounts is an action taken pursuant to its User Agreement with the account holder. I would encourage the parties to review PayPal's user agreement, including the section titled Restricted Activities and Holds and the subsections within that section, to better understand the actions that PayPal may take to limit or hold an account within its sole discretion. **Katie**, I am in the process of obtaining a contact point for you at PayPal so that you can discuss PayPal's independent restriction on your client's accounts and I will provide that information to you as soon as possible.

1/22/2021

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Thank you,

Clete P. Samson

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Minneapolis ▪ Oklahoma City ▪ Omaha ▪ Philadelphia ▪ Richmond ▪ Scottsdale ▪ Spokane ▪
Washington, D.C. ▪ Wichita*

From: Katie Burghardt Kramer <kkramer@dgwillp.com>

Sent: Wednesday, January 20, 2021 4:14 PM

To: Samson, Clete P. <Clete.Samson@KutakRock.com>

Cc: William Dunnegan <wd@dunnegan.com>; Laura Scileppi <ls@dunnegan.com>; Jacob Chen <jchen@dgwillp.com>; RongPing Wu <lwu@dgwillp.com>; Katz, Alyse (Legal) <alkatz@paypal.com>

Subject: Re: Mattel v. GoodMeNow, et al. - 1:20-cv-11075 - motion to modify injunction

[CAUTION - EXTERNAL SENDER]

Clete,

Could you explain whether PayPal is asserting a "security interest" in the Yokawa accounts? If so, can you provide a brief explanation of the basis for, and the nature of, such a security interest? I didn't see that phrase used in your email below, but counsel for Mattel has indicated that you used that phrase in a conversation with him.

Thanks,

Katie

Katherine Burghardt Kramer

kkramer@dgwillp.com

1/22/2021

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Direct: (917) 688-2585

On Wed, Jan 20, 2021 at 1:42 PM Samson, Clete P. <Clete.Samson@kutakrock.com> wrote:

Katie:

I've copied counsel jointly in my responses below so that everyone is on the same page and has access to the same underlying information concerning the current restrictions on the accounts. I could offer no real value or additional information beyond what I have communicated in my emails below, so my strong preference would be not to participate in the underlying hearing. As necessary, and if at the request of the Judge following the hearing, I would be willing to coordinate the provision of a declaration from a PayPal Legal Specialist that discusses the nature of the current restrictions on the 11 accounts. But, again, I've already done my best to describe those restrictions below.

Regards,

Clete P. Samson

Kutak Rock LLP

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From: Katie Burghardt Kramer <kkramer@dgwllp.com>

Sent: Wednesday, January 20, 2021 11:43 AM

To: Samson, Clete P. <Clete.Samson@KutakRock.com>

Cc: William Dunnegan <wd@dunnegan.com>; Laura Scileppi <ls@dunnegan.com>; Jacob Chen <jchen@dgwllp.com>; RongPing Wu <lwu@dgwllp.com>; Katz, Alyse (Legal) <alkatz@paypal.com>

Subject: Re: Mattel v. GoodMeNow, et al. - 1:20-cv-11075 - motion to modify injunction

[CAUTION - EXTERNAL SENDER]

Clete,

1/22/2021

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My colleagues Jacob Chen, Larry Wu, and I are representing Yokawa Network Ltd. in this dispute. If and when the court schedules another hearing on Yokawa's request for emergency modification of the restraining order, would you be willing to participate on behalf of non-party PayPal? It may be helpful if you are willing to do so.

Thanks,

Katie

Katherine Burghardt Kramer

kkramer@dgwllp.com

Direct: (917) 688-2585

On Wed, Jan 20, 2021 at 12:37 PM Samson, Clete P. <Clete.Samson@kutakrock.com> wrote:

Counsel:

To be clear and in response to the questions posed below:

As a result of PayPal's independent restriction on the 11 accounts, no amount of funds could currently be withdrawn from the accounts by the defendant even if the TRO was lifted today. The funds in the accounts would be available to the defendant for use toward payment of consumer refunds only.

Regards,

Clete P. Samson

Kutak Rock LLP

[1650 Farnam St.](#)

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From: William Dunnegan <wd@dunnegan.com>

Sent: Wednesday, January 20, 2021 10:57 AM

To: Samson, Clete P. <Clete.Samson@KutakRock.com>

Cc: Laura Scileppi <ls@dunnegan.com>; Katie Burghardt Kramer <kkramer@dgwllp.com>; Jacob Chen <jchen@dgwllp.com>; RongPing Wu <lwu@dgwllp.com>; Katz, Alyse (Legal) <alkatz@paypal.com>

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[CAUTION - EXTERNAL SENDER]

Clete,

Thank you for your responsiveness.

He are two questions:

1. When you say "restricted" in your e-mail below, do you mean (a) the amount above the "rolling reserve" can be withdrawn from PayPal, (b) no amount can be withdrawn from PayPal, or (c) something else? Another way of asking the questions is: But for the TRO, how much money could the defendants withdraw from PayPal today?
2. For the amounts in the accounts, if any, that are not currently subject to a PayPal restriction, can PayPal create a restriction on those amounts in the future? For example, could PayPal tomorrow increase the amount of the "rolling reserve" by \$1 million?

Bill

William Dunnegan

Dunnegan & Scileppi LLC

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From: Samson, Clete P. <Clete.Samson@KutakRock.com>
Sent: Wednesday, January 20, 2021 11:00 AM
To: Katie Burghardt Kramer <kkramer@dgwllp.com>; alkatz@paypal.com; William Dunnegan <wd@dunnegan.com>; Laura Scileppi <ls@dunnegan.com>; RongPing Wu <lwu@dgwllp.com>; Jacob Chen <jchen@dgwllp.com>
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Counsel,

For your awareness in relation to your underlying civil case, I have attached a spreadsheet which shows the 11 PayPal accounts that are currently restricted by PayPal. The first 8 accounts listed on the spreadsheet were restricted on or about January 7, 2021 as a result of the TRO issued in your civil case. A later search by PayPal revealed the additional three accounts and those accounts were restricted on or around January 12, 2021. All 11 accounts listed on the spreadsheet are restricted pursuant to the TRO in your case as well as pursuant to PayPal's User Agreement based on its own independent analysis of the dispute activity and risk associated with the 11 accounts.

The attached spreadsheet contains a column that shows the total account balance in each of the 11 accounts as of this morning, January 20, 2021. The second column shows the "available balance" in the accounts which is the amount of funds in the accounts that are NOT subject to PayPal's rolling reserve. Please again understand that all 11 accounts are restricted both (1) as a result of the TRO entered in your civil case and (2) independently by PP pursuant to its own independent review of dispute activity and risk analysis related to the underlying accounts. Put differently, even if the TRO is lifted in your underlying case, the 11 accounts may continue to be restricted by PayPal's risk assessment team pursuant to the express terms of its User Agreement with the account holder.

Please let me know if you have any questions.

Regards,

Clete P. Samson

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From: Katie Burghardt Kramer <kkramer@dgwllp.com>

Sent: Monday, January 18, 2021 10:50 AM

To: alkatz@paypal.com; Samson, Clete P. <Clete.Samson@KutakRock.com>; William Dunnegan <wd@dunnegan.com>; Laura Scileppi <ls@dunnegan.com>; RongPing Wu <lwu@dgwllp.com>; Jacob Chen <jchen@dgwllp.com>

Subject: Re: Mattel v. GoodMeNow, et al. - 1:20-cv-11075 - motion to modify injunction

[CAUTION - EXTERNAL SENDER]

Counsel,

We have filed the attached reply in support of our motion for temporary modification of the court order freezing Yokawa Network's PayPal accounts. No hearing has been set at this time, although we anticipate that a hearing will be set for a time this week.

Thanks,

Katie

Katherine Burghardt Kramer

kkramer@dgwllp.com

Direct: (917) 688-2585

On Fri, Jan 15, 2021 at 8:54 AM Katie Burghardt Kramer <kkramer@dgwllp.com> wrote:

Counsel,

Please note that we have filed papers to modify the temporary restraining order that was entered in the matter of Mattel v. GoodMeNow, et al., 1:20-cv-11075-NRB, in the Southern District of New York. We are representing the defendants in that action. A copy of those papers is attached here. The court has not yet ruled on the motion, and my understanding is that Mattel intends to oppose the motion.

Please don't hesitate to contact me with any questions.

1/22/2021

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Thanks,

Katie

Katherine Burghardt Kramer

Partner

DGW Kramer LLP

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This E-mail message is confidential, is intended only for the named recipients above and may contain information that is privileged, attorney work product or otherwise protected by applicable law. If you have received this message in error, please notify the sender at 402-346-6000 and delete this E-mail message. Thank you.



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